

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
MCCRAY, RICHARDSON, SANTANA, : Docket #03cv9685
WISE AND SALAAM LITIGATION :
: New York, New York
: March 1, 2012
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PROCEEDINGS BEFORE
MAGISTRATE JUDGE RONALD L. ELLIS,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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None

E X H I B I T S

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THE CLERK: McCray, Richardson, Santana, Wise &
Salaam Litigation against the State of New York, et al. All
counsel, please identify yourselves for the record.

MS. KAREN DIPPOLD: Karen Dippold --

THE CLERK: Please stand when you address the Court.

MS. DIPPOLD: Karen Dippold, Beldock, Levine &
Hoffman, for the Salaam plaintiffs.

JUDGE RONALD L. ELLIS (THE COURT): Good morning.

MS. DIPPOLD: Good morning.

MS. JANE FISHER: Good morning, Judge, Jane Fisher
(indiscernible) for the Wise plaintiffs .

MR. MYRON BELDOCK: Good morning, Myron Beldock,
also for the Salaam plaintiffs, from Beldock, Levine &
Hoffman.

JONATHAN MOORE: Good morning, Judge, Jonathan Moore
for the plaintiffs.

THE COURT: Good morning.

MS. ELIZABETH DAITZ: Good morning, your Honor,
Elizabeth Daitz for defendants.

THE COURT: Good morning.

MS. GENEVIEVE NELSON: Genevieve Nelson for
defendants. Good morning, your Honor.

MR. ANDREW MYERBERG: Andrew Myerberg for
defendants, good morning, Your Honor.

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THE COURT: Good morning.

MR. PHILIP DEPAUL: Philip DePaul for defendants,
good morning, Your Honor.

THE COURT: Good morning.

MALE VOICE: (inaudible)

THE COURT: Good morning. This is our regularly
scheduled appointment. There are a couple of things that are
pending, I will list what I have on my pad and if there are
other things you should let me know. There is still the City's
pending motion for reconsideration, which I know has been
pending since December. And since it only involves four
documents, I think that gives another month, one month per
document, so I'm on schedule.

There is the motion to dismiss Delores Wise, the
latest in that was the -- I had issued an order to show cause
and I have not seen any, typically after I do an order to show
cause if I don't get a response I will make a recommendation
to the Judge to dismiss the case. So what we do is have sort
of a grace period, we don't do it as soon as the period ends,
but we make sure that there is no chance that somebody mailed
something and it didn't get to us.

The major issue that's on my list is this New York's
request for a protective order concerning Detective Arroyo and
Michael Sheehan, anything else?

MS. DAITZ: Your Honor, we do have sort of an overarching issue that defendants need to bring to the Court's attention today, and that is that we're having difficulty obtaining discovery from plaintiffs. In the past couple of months we have had trouble getting responses to our letters and emails, we have agreed at times on extensions for certain discovery to be completed, but those dates have come and gone with no information from plaintiffs as to when discovery would be forthcoming.

And in particular, the parties had agreed to amend their discovery responses, their written discovery responses to interrogatories and documents requests following a number of instructions from the Court at these conferences indicating that the parties needed to provide sufficient information to the other side about where responsive information can be found in past document productions in order for the responses to interrogatories and document requests to be useful.

So in July, defendants served a second set of discovery requests on plaintiffs, plaintiffs responded in October. We immediately realized that they had often referred to all the previously produced documents. So, for instance, we would ask for information, documents that evidenced plaintiffs' economic losses, for instance, and the response that we got was if we had such documents we've already

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2 produced them, see 16,000 pages of prior production. And that
3 was exactly the type of response that plaintiffs complained of
4 about defendants' responses.

5 THE COURT: Somebody's phone is ringing. Did
6 somebody forget to turn off their phone?

7 MALE ATTORNEY: I did, Judge.

8 THE COURT: You know, in some courts that would be
9 the last time that would happened.

10 MALE ATTORNEY: It's happened to me before, Judge, so
11 I apologize.

12 THE COURT: Okay. Unlike in the theater, there is
13 nobody to remind you to turn off your phones.

14 MALE ATTORNEY: Right, I agree.

15 MS. DAITZ: So, Your Honor, defendants supplemented
16 their responses to plaintiffs' requests and responded to
17 plaintiffs' lengthy deficiency letter in January pursuant to
18 the parties' agreement, but we then gave plaintiffs an
19 extension until mid February to do the same, we haven't
20 received another request for an extension. The parties had an
21 extensive meet and confer on Friday, we were sure that this
22 information would be produced either Monday or before the
23 conference, and we did get supplemental responses from the
24 remaining Wise plaintiffs, excluding Delores, but we haven't
25 gotten anything from the rest of the plaintiffs. And we are

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2 unsure why the position is now that these dates can come and
3 go and we're told that we'll get releases, you know, when
4 plaintiffs get a chance to get to it and not that the parties
5 are endeavoring to meet even our interim deadlines as we have
6 been in the past. And we find it somewhat problematic because
7 we do need to take these plaintiffs' depositions and the
8 failure to get properly amended discovery responses is really
9 holding us up. So we think it's a problem.

10 THE COURT: Any response from the plaintiffs?

11 MS. DIPPOLD: Your Honor, I am one of the guilty
12 parties here and I admit that I'm behind in the Bates numbered
13 project. Although I will tell you that with respect to the
14 Salaam plaintiffs, our second set of discovery responses
15 identified, many of them identified by Bates numbers documents
16 -- identified by Bates numbers the documents that were
17 responsive. The only documents that were not identified by
18 Bates numbers were documents that were, for example, produced
19 as part of our 26(a) initial disclosure.

20 So I am working on that project, I unexpectedly
21 became involved in a trial and some other matters that have
22 taken weeks of my time. So, unfortunately, I'm the guilty
23 party. I'm working on it, I'll have it in a few days. I would
24 also add that we have, and I understand that the Richardson,
25 Santana and McCray plaintiffs have provided letters with that

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2 information. I'll leave that to Mr. Moore to address that, but
3 I am working on it, as soon as I'm finished I'll give it to
4 them.

5 And I must say that with respect to their response
6 to our deficiency letter, I haven't yet had time to go through
7 that and we think there will be additional issues with respect
8 to that.

9 THE COURT: Okay, am I to understand that you
10 pleaded guilty with an explanation?

11 MS. DIPPOLD: Yes, that's right.

12 THE COURT: But I guess that Ms. Daitz' overarching
13 concern was that you respect dates, and what she would at the
14 very least want is that the dates don't pass without some
15 other kind of accommodation. It sounded like oddly enough I
16 have a case where the issue was somebody was, every six months
17 they were getting an accommodation and then nobody heard
18 anything, and the question was did the accommodation continue
19 or did not continue. It's creating an issue in that case, but
20 I gather you're also saying that you are not disputing that
21 there was a deadline in mid February and that deadline passed
22 and you didn't say to Ms. Daitz I'm working on it and can we
23 at least officially change the deadline?

24 MS. DIPPOLD: I did not, that's correct, guilty as
25 charged. Oh, we did discuss it in the meet and confer that we

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2 had on the phone on Friday.

3 THE COURT: Okay, let me get -- there is too much of
4 the back and forth, because I do want you to as much as
5 possible to agree on things, is that to some extent, in most
6 cases, there is always an incentive for the plaintiff to move
7 cases forward. Since it is pretty clear that part of the issue
8 here is that the defendants want to take depositions of
9 plaintiffs, but get their discovery, their paper discovery
10 before they do that, to the extent that the plaintiffs do not
11 complete that process that is limiting (indiscernible) itself
12 in the case going forward.

13 So I hear your explanation and to some extent it
14 becomes a self-inflicting wound when you're the plaintiff who
15 wants the case to move forward. Because to the extent that the
16 plaintiffs are entitled to documents before they do the
17 deposition, they will get -- I'm not going to force them to go
18 through depositions, any more than I would force any party to
19 take a deposition without documentary discovery. So you have
20 an incentive to produce it, I suspect that you probably have
21 many other pulls on your time, but our universe is this case
22 and I want to make sure that parties, at least with respect to
23 discovery, continue to communicate.

24 MS. DIPPOLD: Your Honor, if I might make a
25 suggestion, almost inevitably when we get a letter from

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defendants, they will put some arbitrary date in the letter saying we have to get them these releases, we have to do whatever it is the letter is asking by a particular date. They don't consult with us regarding that date. And I think if it's something that the rules, the federal rules, the local rules don't provide a date for, perhaps they can consult with us before they set an arbitrary date?

THE COURT: Well, okay. It is certainly possible, before you set any dates, it is certainly possible that they could do that, although I will tell you that I had a case in which what happened is one party suggested a date and the other party says how about another date, and it's sort of like mediation. I don't think that if they put a date in they the force of law. So if you think that the date that they put is arbitrary, it doesn't necessarily mean it's capricious. And if you think you need more time, just get back and say, Ms. Daitz, I can't do this in two weeks, give me four weeks, and they'll say three weeks, and then you moderate that. I don't think this is, I mean at times it seems, I'm sure it may seem as if they're dictating, but the give and take is if they suggest it, I can only in my mind, anything they send you is only a suggestion. And I so you'd be free to say something else and just give her a counter date because of your schedule or whatever obligations you have.

MS. DAITZ: Your Honor, I just wanted to point out that defendants are amenable to granting requests for extensions. We recognize that plaintiffs' counsel have, you know, multiple matters on their plate and that Mr. Beldock and Ms. Dippold were just on trial. We don't begrudge them that. Of course, we are extremely interested in moving the case along, but at the same time, you know, whether it's a date in a letter or the thirty days under the rules to provide responses to interrogatories or document requests, we are always open to a suggestion from plaintiffs about, you know, a longer time period if needed to comply or respond to a request. That's not really the issue, it's more the lack of communication that we're raising.

With respect to Ms. Dippold's representation, I understand that it was, Mr. Moore will address separately, but we did schedule a meet and confer on Friday and those meet and confers are routinely requested by defendants so that the parties can discuss any issues before the conference and much of the time we do manage to hammer out at least a few things before we come before the Court. And on Friday, which was two weeks after the date by which we expect plaintiffs to amend their discovery responses, we did discuss that issue again, as Ms. Dippold represented, but we were told that we would have it by today and we still don't have it.

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2 So again, if plaintiffs had touched base with us
3 yesterday and said you are not going to have these responses
4 before the conference, you know, can we have another week, is
5 that a problem, then I think we would have been less inclined
6 to necessarily bring it to the Court's attention. But with
7 respect to the McCray, Santana and Richardson plaintiffs, we
8 haven't received any responses, and I understand that there
9 might have been some office error about who was responsible
10 for sending them. But the one thing that we did get was a
11 letter regarding plaintiff, Crystal Kuphy (phonetic), and this
12 is an issue that Ms. Dippold referenced, as well.

13 I mean plaintiffs produced something like 16,000
14 pages of documents with their initial disclosures. So in
15 response to our discovery requests for specific documents, you
16 know, or in response to our deficiency letters regarding
17 specific documents, what we got from this particular plaintiff
18 thus far is a letter saying see our 16,000 pages of initial
19 disclosure. And we don't think that that's sufficient to
20 comply with the federal rules, and indeed it's not sufficient
21 to comply with the rulings that the Court made in this case
22 instructing defendants to go back, go over their prior
23 document productions, and identify where in each production
24 you can find information responsive to those requests. And
25 considering that plaintiffs moved for sanctions against

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2 defense counsel when defendants took more than 24 hours to
3 comply with that request with respect to the NYPD training
4 materials, we're kind of confounded by the fact that we're
5 still getting the same types of responses from plaintiffs.

6 THE COURT: Mr. Moore, you have the podium.

7 MR. MOORE: Thank you, Judge. I don't understand the
8 City's response with respect to the Santana, Richardson,
9 McCray plaintiffs. On February 6th we sent -- one of the
10 problems is there's so many Assistant Corporation Counsels,
11 two of whom are not here, who we have been sending stuff to.
12 So on February 6th we sent a letter to Mr. Myerberg with
13 additional authorizations for Valerie Kuphy. On February 6th we
14 sent a letter to Ms. Siskind, Shyra Siskind (phonetic),
15 Assistant Corporation Counsel, with additional releases for
16 Raymond Santana, Sr. On February 7th -- on February 6th we
17 sent additional releases that had been requested for Crystal
18 Kuphy. On February 6th we sent a three page letter, that
19 letter was to Mr. McQueen, the one about Crystal Kuphy. On
20 February 6th, as well, we sent a letter to Elizabeth Dolan in
21 response to deficiency letter with respect to Joanne Santana,
22 identifying documents by Bates number and responding to that
23 deficiency letter. And on February 7th we sent another letter
24 to Matthew McQueen, this is all before the date of February
25 15th which was the deadline that had been set, on February 7th

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2 we sent a letter to, once again to Matthew McQueen with
3 respect to deficiencies identified in Crystal Kuphy's response
4 to defendants' discovery request, which included responses, as
5 well as reference to Bates stamp, Bates numbers.

6 So with respect to the specific requests, I'm not
7 aware of any that are at present outstanding with respect to
8 the McCray, Richardson, or Santana plaintiffs, other than a
9 letter I got yesterday, another ten-page, single-spaced
10 alleged deficiency letter with respect to Valerie Kuphy, which
11 I was only able to open and look at today because I was
12 otherwise engaged yesterday.

13 So specifically we've responded to it, but let me
14 make a general point about the discovery, because the
15 suggestion has been made that somehow the plaintiffs are
16 delaying the progress of this case by holding up depositions
17 and it couldn't be further from the truth. In fact, we have
18 gone to extreme lengths to comply with the City's response.
19 Let me give you an example with respect to Linda McCray.

20 Linda McCray is a familial plaintiff, the mother of
21 Antron McCray, she works at the same job she worked at back in
22 1989, she lives in the same house she lived in, same apartment
23 she lived in back in 1989. We have provided the City 49
24 releases for medical records, work related records, for parole
25 records, of course they wouldn't accept our representation she

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2 was never on parole, for unemployment records, for Social
3 Security Disability records, and all the rest are different
4 doctors who for 90 percent of them, 95 percent of them, Ms.
5 McCray has no knowledge of ever having seen them or sought
6 service from them.

7 What the City is doing is they go through the
8 records that they get and they see a doctor's name here and
9 there, and then they send another release. This is a serial
10 process, and Ms. McCray is probably not the worst example from
11 the City's perspective of the kind of releases that they are
12 asking for. But just she alone has, we have submitted 49
13 releases, and that requires us not just to go, send a release
14 to our plaintiff and have them sign it, we have to bring them
15 in. Because we have to go through all the names of the
16 doctors and say have you ever seen Dr. Mitchell Rosling, have
17 you ever seen Dr. Cecilia Villa, no. Well, could, you know,
18 we'll go through the medical records, do you remember going
19 for a test. They have also asked for any records of diagnostic
20 tests, you know when they go to the doctor they take a blood
21 test so they're getting records from Quest Diagnostics and
22 other Diagnostic facilities.

23 So I just, I'm dumbfounded to hear that, one, we
24 haven't responded, because I believe we have, and I have
25 copies of the letters, and secondly, as a general matter, we

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have done all that we can to move this case along in terms of responding to the City's discovery demands. Let me give you an example of how extreme it is.

With respect to Raymond Santana, Sr., they asked for a release from somebody, I think I have the name here, from a, they identify her as a Dr. Lena Lopez, there is no Dr. Lena Lopez. Ms. Lopez was a family friend who was identified by Mr. Santana in a form her prepared when he went to see a doctor as a primary contact, and they sent us a release for a Dr. Lena Lopez. In fact, it's his wife. And the -- it's that kind of process that we have gone through here for months now that is delaying the taking of these depositions. And I just think we've really reached the limit on this.

And I understand on some broad theory of relevance that they -- that you have given them the permission to do this. But I think it's really time to call a halt to it. I can't keep bringing my client down to my office for two and three hours to go through medical records of people that they've produced to -- that they've produced to us, or they've identified some names, and spend two or three hours saying do you remember Dr. so and so or Dr. -- no, I have no idea, I have no knowledge. There's just a limit to it. I think they should do these depositions if there is something of importance identified in the course of the deposition that

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2 requires them to bring the person back because this is some
3 very important medical professional that they absolutely have
4 to ask our client some information about then we'll do that.
5 But they've set up this sort of rolling process where they're
6 never satisfied, which is illustrated by the fact that just
7 yesterday I got a whole new set of --

8 THE COURT: I get your point, Mr. Moore. Do you
9 want to add to that point --

10 MS. FISHER: I would like to add to that, yes. Your
11 Honor, just to piggyback on what Mr. Moore is saying, we've
12 just, the deposition of Victor Wise has already been done.
13 And yes, it was left open, but now I've gotten another set of
14 releases for medical records for him and it's the same thing,
15 it's ongoing, it's continuous, and to be honest, I can't
16 recall from his two-day deposition that a single question was
17 asked about anything that was in the medical records that was
18 produced to me before the deposition. Now it's the same thing
19 for Michael Wise who I think has probably signed more than 49
20 releases and they're asking us to sign releases for things
21 such as acupunctures and saying well it sounds like this name
22 but it may not be the right one because we can't find someone
23 with that exact name.

24 THE COURT: I get your point. What's the City's
25 response?

MS. DAITZ: Your Honor, first I think that there's two separate issues here. The first is amended responses to our discovery requests. We ask that plaintiffs take, you know, our interrogatories and document requests, excuse me, that they look at the versions that they provided to us, recognize where they cite to all previously produced documents, and revise those responses. We asked that in early November of 2011. By email of December 13th, Ms. Byrialsen represented on behalf of all plaintiffs that the plaintiffs agreed to do what we were asking them to do, which was revise their discovery responses. That's what Ms. Dippold is referring to as the Bates numbering project, to provide an indication as to where in prior document productions responsive information is to be found.

It is my understanding, and I had no reason to believe otherwise, that Mr. Moore's clients were doing exactly the same thing since Ms. Byrialsen represented that there was no need to seek judicial intervention, as I indicated in the last email I sent in mid December, that we were going to do because we hadn't received any response about whether or not plaintiffs even agreed to do this. And we went forward on the assumption that that's what we would be getting, and, in fact, that is what we got from the Wise plaintiffs earlier this week. I haven't reviewed it in great detail but I do know that

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they complied with exactly what they said that they represented they were going to do. So that issue, those are what we're missing from the McCray, Santana and Richardson plaintiffs, we're missing revisions to their discovery responses.

The releases that Mr. Moore has provided are a separate issue.

THE COURT: Before you get to that separate issue, you're saying that what Mr. Moore says has been produced is not what you're complaining about?

MS. DAITZ: Exactly, what he's referring to are signed authorizations for things like medical treatment, employment records, et cetera, and I could address that in a moment. But in the interim, what Mr. Moore has continued to provide is see Bates numbers AM000001 through 016516, in response to all of our discovery responses.

MR. MOORE: No.

THE COURT: Is this something that was agreed to that you're talking about?

MS. DAITZ: Well, in the first instance, Your Honor, as you may recall, I just want to remind the Court of sort of the history of this issue. Back in June of 2010, plaintiffs at a conference, one of our first conferences before the Court, complained that defendants, in their discovery responses,

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2 merely referred to see our prior productions of documents.

3 THE COURT: Okay, I remember that, I just want to
4 know about what are you complaining about with the plaintiffs,
5 was this an agreement that they had agreed that they would
6 revise their responses?

7 MS. DAITZ: We called to plaintiffs' attention by
8 letters that their responses did not comply with what Your
9 Honor indicated that the parties should do. At both in June
10 of 2010, again that fall, the following year, the Court ha
11 continuously told the parties that we need to provide
12 information sufficient for us to find responsive information
13 in this enormous universe of documents that have been provided
14 to date. Plaintiffs agreed by email from Byrialsen in mid
15 December, that they would revise their document responses,
16 discovery responses, to comply with the directives of the
17 Court and to comply with what defendants had requested that
18 they do.

19 THE COURT: Okay, so you get something from Ms.
20 Byrialsen saying we're going to revise and you're saying
21 that's what Mr. Moore hasn't done on behalf of his clients?

22 MS. DAITZ: Yes.

23 MR. MOORE: Judge, I responded to the specific
24 letters, I'm still getting them. So I don't even understand
25 how, I mean this is somewhat of an inconsistent argument. If

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2 that is, in fact, the case, why did I get a letter yesterday
3 from Mr. McQueen, asking me for specific -- pointing out
4 specific deficiencies in plaintiff, Valerie Kuphy's discovery
5 responses? I mean either they're going to tell us that they
6 want specific information or they want some kind of general
7 revision of our general discovery demand -- responses, which I
8 never understood was what we were required to do. My
9 understanding was that there were specific responses that they
10 felt were deficient, they identified them, and we responded.

11 MS. DAITZ: Your Honor --

12 THE COURT: Okay --

13 MR. MOORE: And that's what we did.

14 THE COURT: I understand what we have here is a
15 failure to communicate, because you seem to be talking about
16 two different thing.

17 MS. DAITZ: I believe so, Your Honor, and I'm kind
18 of confounded by what Mr. Moore is saying because we made it
19 very clear in our November letter that we would address issues
20 --

21 THE COURT: Let me just say that you're on the verge
22 of being banished to my jury room, because I will decide
23 issues, but the parties have to be talking about the same
24 issue. And if you're saying that an agreement through Ms.
25 Byrialsen that the plaintiff would revise some answers to

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2 discovery requests and that Mr. Moore, on behalf of his
3 client, did not follow through with that, I'm not sure he's
4 acknowledging that, or he's saying that there were specific
5 things that he was having communications with people on the
6 defendants' side saying okay, these are things that we want, I
7 need to know what it is --

8 MR. MOORE: Judge, I'm saying we've responded to
9 every specific deficiency --

10 THE COURT: Do you know what she's referring to when
11 she talks about this conversation with Ms. Byrialsen about
12 revising responses --

13 MR. MOORE: I'm not aware that we had a general
14 obligation, and I still don't understand what it would be, I
15 don't know how it even worked. Is the City saying that we
16 should revise now, after going through this whole process,
17 including responding to specific deficiencies in the course of
18 specific letters sent to us by the City for specific
19 plaintiffs, that we now have to go back and revise all of our
20 preceding general discovery responses when they first filed
21 their discovery demand? It just doesn't make any sense. And I
22 don't think they're operating under that assumption, otherwise
23 we wouldn't have got a letter yesterday asking for specific,
24 to cure specific deficiencies with respect to Valerie Kuphy's
25 discovery responses. They're talking out of two sides of their

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mouth is what I'm suggesting, Judge.

THE COURT: Okay, I hear what both sides are saying but it's not inconsistent that the City could be expecting that certain prior responses would be answered with specificity and to still point out other things that were separate and apart from those requests that they wanted answers to. What I'm not getting, however, is that you're still talking about the same thing. And --

MS. FISHER: Your Honor, I may be able to clarify this to a certain degree. I think part of the problem is that the letter that was sent to Mr. Moore was different from -- it was very specific to particular clients rather than a general letter, information that Ms. Byrialsen and I received, that was -- I think that's part of the problem and why there is confusion. Because the letter that was sent to Mr. Moore did not say that we have to go back and look at our prior disclosure and identify those Bates numbers that are specific to a particular request by Bates number.

MS. DAITZ: Well, Your Honor, in November of 2011, I sent two letters to all plaintiffs' counsel saying this is a global issue with your responses to defendants' discovery requests that needs to be addressed in accordance with the Court's prior rulings and with what you have requested that defendants' do. The two letters were sent to all plaintiffs'

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2 counsel. Ms. Byrialsen's email response in December saying we
3 are working on this, you don't need to seek judicial
4 intervention. Was sent to all plaintiffs' counsel. I mean Mr.
5 Moore is saying that it's, you know, we're talking out of both
6 sides of our mouth about what we want, but Ms. Dippold and Ms.
7 Byrialsen and their colleagues are doing exactly what we
8 requested that they do, you know, at least that's our
9 understanding. So I don't know why Mr. Moore doesn't seem to
10 be conferring with his colleagues about these issues, but
11 everyone else is, at least as far as we know, you know, in
12 progress on that.

13 And with respect to the specific letters, the
14 subsequent letters with respect to each individual plaintiff,
15 those are the letters that in our November letter, we said we
16 would address separately deficiencies with respect to each
17 individual plaintiff while we await your revised responses.
18 And that is exactly what we have done. So I think if there was
19 any concern, you know, about what exactly we were asking or --
20 we could have discussed it.

21 THE COURT: The good news is that now that you are
22 all here talking about this, I assume that you could have a
23 conversation which you can distill this for me so that I don't
24 have to referee so to speak, and so we're going to do two
25 things. One is we're going to chat a little bit about the

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2 issues that I raised, and then this issue which was sort of ad
3 hoc, which has sort of overwhelmed the proceeding today, I
4 want you to at least have a meeting of the minds about what it
5 is that is the problem here. And at least what I hear Ms.
6 Daitz saying is that some of the plaintiffs are doing the
7 Bates thing and with respect to I guess McCray, Richardson and
8 Santana, that's not been done.

9 MS. DAITZ: That is my understanding, Your Honor.

10 THE COURT: Okay. All right, well, let me -- let
11 me, I will give you an opportunity to make sure that you
12 understand what -- maybe you and Mr. Moore should have a
13 conversation in conjunction with the other plaintiffs to make
14 sure that everybody is doing the same thing.

15 With respect to the issues that I raised at the
16 beginning, anything (indiscernible) on those?

17 MS. DAITZ: Your Honor, I believe you raised the
18 issue of defendants' application for a protective order
19 regarding the scope of the depositions of defendants Sheehan
20 and Arroyo. Defendants' reply is currently due to be filed on
21 -- submitted to the Court on Monday. So we don't know that
22 that issue is necessarily ripe. We did bring to the Court's
23 attention that with respect to plaintiffs' cross motion, that
24 plaintiffs' had not raised any of those issues with
25 defendants, so we hadn't had an opportunity to, you know,

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2 review the documents that were at issue and determine whether
3 we could reach an agreement before plaintiffs sought judicial
4 intervention. So it is my understanding that plaintiffs have
5 agreed to withdraw their cross motion without prejudice, with
6 leave to renew once the parties have had an opportunity to
7 confer regarding those issues.

8 And just the other issue on that was regarding the
9 confidential information contained in that information. So we
10 also discussed that with Mr. Beldock this week, but we just
11 wanted to be sure that plaintiffs' cross motion was not going
12 to be docketed since it does contain information that is
13 confidential under the stipulation and protective order.

14 MR. MOORE: Judge, can I respond to the Arroyo and
15 Sheehan thing? The City has made a motion to preclude areas
16 of testimony with respect to Mr. Arroyo, Detective Arroyo,
17 because he had a conviction apparently subsequent to his
18 leaving the NYPD, as did Detective Sheehan. And I don't --
19 how can we -- so I get this request and I say, all right, I
20 know they've gone, they've turned over every stone with
21 respect to our plaintiffs, and yes, they're seeking a lot of
22 damages, okay, they are somewhat different, but these are
23 defendants in the case, in a very important case. And so I go
24 back and I say to anybody in my office have we gotten
25 Detective Arroyo's personnel file, and we haven't gotten it,

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2 and we've requested it, I'm sure we requested it years ago.
3 And so I understood what they were raising was, what we were
4 raising in this letter was, we can't, in our cross motion was,
5 it's disingenuous for you to say you can't inquire into this
6 and not turn over information that would allow us to somehow
7 flesh out the true relevance of that information. Is it
8 similar to a pattern of conduct while he was in the police
9 department, I know some of these officers have extensive
10 disciplinary histories --

11 THE COURT: I understand the point that you're
12 making, although I think Ms. Daitz was saying that their brief
13 hasn't been done so it wasn't necessarily right. And I grant
14 you that, although I do think that, I want to hear from Mr.
15 Beldock first, but I had some, I did have some comments about
16 -- yes, is there an agreement?

17 MR. BELDOCK: There is an agreement, although I
18 would phrase it somewhat differently. I had the conversation
19 yesterday with Mr. Lambert, he says they'll review the
20 redacted materials to see whether they would agree to
21 unredact, and I said, therefore, I would agree that we would
22 -- I would rather them withdraw that portion of the motion,
23 hold it in abeyance because there are only a few days in which
24 this is going to develop, and not submit that, so to speak,
25 the cross motion, until they respond. If they respond and say

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2 they're not going to unredact documents, then the cross motion
3 is right for determination. We actually didn't think they
4 would, but I'll take the fall for that, I supervised it. So we
5 (indiscernible) in advance.

6 We've been under a lot of pressures, we're all under
7 a lot of pressures, I explained that to Mr. Myerberg, he
8 understood. I just don't want to take --

9 THE COURT: You didn't mean to defer on, which one
10 are you talking about?

11 MR. BELDOCK: On the cross motion issue of,
12 compelling discovery by unredacting items in the personnel
13 file of Sheehan. I didn't think that they would unredact
14 considering the position we didn't think they would unredact
15 considering the position that they took to begin with for a
16 protective order. So it seemed futile to us, but it passed, it
17 was not thought through correctly, so we're dealing with it
18 now. I would rather not physically have to take anything back
19 from the Court. In a few days they will tell us the answer to
20 whether they are going to agree or not, and if they don't
21 agree then the motion to compel is right.

22 THE COURT: All right, with respect, of course, to
23 confidentiality, I can understand issues being raised. I must
24 say, however, directed to the defendants, that given the fact
25 that there was a request for a protective order, I think my

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2 initial reaction was the same as Mr. Beldock's, that it would
3 seem that if I were in the position I might think it futile to
4 think that you're going to have an agreement on the
5 information concerning the individuals.

6 MS. DAITZ: Your Honor, our motion for a protective
7 order was very discreet and it was about three discreet
8 incidents. It was not a general motion for a protective order
9 to preclude plaintiffs from discovery on disciplinary history.
10 And in the past when plaintiffs did ask for less redacted
11 versions of documents like IAB resumes, we did reconsider our
12 position and provide it to them. So we remain open to
13 discussion regarding specific redactions that were made to
14 documents to see if we could reach an agreement without
15 judicial intervention.

16 THE COURT: Well let me just give you one comment
17 and that is that your response is due Monday?

18 MS. DAITZ: Yes, Your Honor.

19 THE COURT: I think you should be prepared to
20 address, although we didn't have a discussion about it, an
21 argument about it today, the comments that Mr. Moore just
22 made. I know it doesn't always seem that way, but things also
23 occur to Court even if the parties don't bring them up, and
24 that is as defendants point out, the -- you have taken some
25 rulings that I've made and extrapolated them as to behavior

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2 that the plaintiffs should abide by. There is nothing wrong
3 with that. But also I will say it doesn't necessarily follow
4 that if I make a ruling with regards to one side it will apply
5 to the other side, although that is probably a good starting
6 point.

7 The issue that you should address is given the
8 extent of the discovery that the defendants have sought with
9 respect to the plaintiffs and the areas that have been
10 inquired into, why would information concerning these
11 defendants not be open to discovery? That is you can argue
12 about the admissibility, but I suspect that a number of things
13 that been the subject of discovery in this case aren't going
14 to make it into the trial as evidence.

15 MR. BELDOCK: We addressed both those issues in our
16 responsive papers, Judge. That's what we said in short, we
17 said it in long by adding many details, but that's the short
18 answer we think.

19 THE COURT: But I don't you to miss the issue that,
20 one of the things that has been bandied about on both sides is
21 that he parties that are the subject of depositions, in
22 addition to the facts in the case, it does appear that the
23 parties have raised questions on a continuing basis concerning
24 the credibility of the witnesses that they are going to be
25 deposing. And the credibility clearly is broader than the

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2 claims in the case and some things that go to someone's
3 credibility go indeed, may not be constrained by time related
4 to the particular incident.

5 So I do want you to be aware that I have some
6 concerns whether or not, if you're dealing with parties to a
7 case, whether or not anything that goes to their credibility
8 might not be an appropriate subject for deposition.

9 MS. DAITZ: Your Honor, defendants will definitely
10 address those issues in our reply Monday. I could just, you
11 know, in brief, I think our position is that plaintiffs in
12 this case are seeking, you know, \$50 million plus in damages
13 and claiming -- each, and claiming lifelong economic, medical,
14 physical, and psychological injuries as a result of their, not
15 just arrests, but their respective family members' arrests.
16 And that is --

17 MR. MOORE: Not the arrests, how about the
18 incarceration.

19 MS. DAITZ: Excuse me. And that --

20 THE COURT: Excuse me, Mr. Moore, I don't want to
21 have to admonish any counsel for interrupting another counsel,
22 no matter what you think of what they're saying. I don't think
23 I have the reputation of not giving people the opportunity to
24 speak their side. So I trust we won't have any of that
25 happening again. If you have something to respond to Ms.

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Daitz, you will await your turn.

MS. DAITZ: Your Honor, those damages claims is and were the basis for defendants' request for releases regarding, you know, educational, alleged education, loss of educational opportunities, loss of employment, medical and mental injuries. I mean those records go directly to plaintiffs' damages claims.

With respect to what Mr. Moore said earlier about the never ending request for releases, I mean we have asked plaintiffs on more than one occasion to go through a set of medical records that we're producing and provide releases for additional providers that they think might have relevant information. And the response that we got from plaintiffs is give us a list and we'll give you the releases.

So because we're not in any position at the outset without the records to determine relevance, we've provided them with lists of all the providers who are referenced in those medical records. I mean plaintiffs, assuming, you know, at the time the complaint was filed and thereafter, got some sense of what their, you know, the scope of their claimed damages were and what the basis for that scope of claimed damages were. And certainly last year when the Court ordered plaintiffs to provided damages charts, breaking down by category of damages what, you know, which plaintiff sought

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2 lost wages, which plaintiff sought injuries for psychological
3 damages, et cetera, we're assuming that they had conversations
4 with their clients at that time and got a sense of who the
5 providers were that provided this treatment. And if at that
6 time the releases would have been provided, it would have
7 saved sort of this ruling cycle.

8 THE COURT: Let's just have a reality check about
9 what happens with medical providers, okay. You know, this
10 reminds me of the medical malpractice case where the lawyer
11 sues everybody whose name appears on any document, and, you
12 know, it doesn't mean that these are the medical providers
13 that are going to give any relevant information. I mean the
14 typical person, and I have these medical malpractice cases,
15 the typical plaintiff knows who their doctor is, they don't
16 know the anesthesiologist, they don't know the other attending
17 physicians, they don't know who came to visit them on any
18 given day, you know. To me, you know, if you ask the typical
19 plaintiff to do that, whether you're the plaintiff's lawyer or
20 you're the defendant, they're not going to be able to answer
21 those questions.

22 And so, you know, as a reality, we're just not going
23 to get all of those names of all those people, and those
24 people aren't even going to be particularly relevant when it
25 comes time for trial. I mean we're not going to exhaust this

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2 no matter how we deal with it. And so at some point we're
3 going to have to decide how much effort we're going to require
4 people to put into the process.

5 MR. MOORE: And Judge, that's what --

6 MS. DAITZ: And most recently, one of the releases
7 that we requested for Michael Wise, it's not like some
8 podiatrist who was referenced in medical records, you know,
9 for a one-time visit in the hospital. You know, plaintiff
10 Michael Wise was hospitalized for months and failed to
11 disclose that hospitalized, even a provider, to allow us to
12 obtain his medical records. You know, within the past five to
13 ten years.

14 THE COURT: You know, if you have examples like
15 that, we could deal with that, but, you know, you are really
16 talking about two different things. I mean Mr. Moore is
17 talking about, you know, the person who like is tenth down on
18 the list, you're talking about missing a hospital. Those
19 aren't the same things and if you want a hospital that
20 somebody went to if he tried to object to that, it wouldn't
21 get any traction. By the same token, if, you know, if you go
22 through a medical record and find the name of some medical
23 personnel who is in that, first of all, nobody is going to
24 follow up on that.

25 MS. DAITZ: Well, Your Honor, we've tried to have

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conversations with plaintiffs about --

THE COURT: But my point though, Ms. Daitz, is that you can't be, you know, the reality is, maybe you're different, I mean I can tell you that I mean I get me explanation of benefits and sometimes there's the name of a doctor there that I didn't even know that was the doctor who was going to be there. And I think I'm pretty intrusive when it comes to the doctor. But, you know, you go get an MRI and you don't know the name of the doctor.

So, you know, the expectations here just may be what's causing the parties to have a disagreement. I gave you the hospital example, you know, if somebody has been in the hospital for a month, okay, you should get that, but what I fear we're getting here is that we're getting caught up in the players that are so far down the line that the likelihood that there is going be any relevant evidence gotten from any of these names of people is unlikely.

MS. DAITZ: Your Honor, I think we could safely say that we didn't start with the hospitals and the primary care physicians, and the really important providers, for lack of a better word, if we didn't know who they were. So it's not that we started with a broad scope and now what we're asking for is, you know, the anesthesiologist's ex-wife's whatever, you know, that has some tangential relevance, at best, I think

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2 we're really not in the position to know by virtue of some of
3 these records who is going to have, you know, a huge file, and
4 who is going to come back and say I had one consult note and
5 it was included in what you got from the hospital. And that's
6 why we asked plaintiffs to assist us in identifying who
7 actually might have relevant providers.

8 But that being said, I think the whole point that
9 we're trying to make is that plaintiffs are claiming, you
10 know, \$50 million each of lifelong damages that affect every
11 aspect of their lives as a result of this incident, and that's
12 why we're trying to uncover, you know, a basis and, in
13 addition to put on a defense, you know, of not being the
14 proximate cause of damages and all that.

15 THE COURT: I hear what you're saying, although I
16 have an employment case in which the defendants kept saying
17 the plaintiffs are claiming, and I forget how many
18 (indiscernible) it was, I don't think that the claim is going
19 to mean that the Rule 26 gets to be a different animal because
20 they claim \$50 million, if they claimed \$5 million are you
21 saying these would not be relevant?

22 MS. DAITZ: No, it is not the number, Your Honor,
23 it's the scope that makes up that number, the education, the
24 employment, the medical, the mental, the physical, the
25 familial, it's that aggregate --

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2 THE COURT: Right, the Court is not (indiscernible)
3 the medical issue. I mean I understand that you
4 (indiscernible) other than medical. I was only addressing the
5 question of medical, and that is that to the extent that what
6 happens in these cases and whether they're personal injury or
7 employment, or (indiscernible) nature, whatever, if you start
8 to try to figure out who is going to be relevant from the
9 point of view of a medical provider, okay, I'm sitting here
10 with my obligation to make sure that these things don't spin
11 out of control. And I'm wondering why does this all become
12 relevant because the normal thing that I do in these cases is,
13 you know, if the plaintiff is claiming some kind of an injury,
14 if the plaintiff wants to show that, they've got to put the
15 witness on, and if they are not going to put the witness on, I
16 guess the defendant can say, well, we might find something in
17 there in which the witness shows that there wasn't any
18 injuries. And in theory I suppose that could always happen,
19 but --

20 MR. MOORE: Judge, could I --

21 THE COURT: I don't know how many files that we're
22 going to talk about. But again, I didn't mean this to suggest
23 that there is -- this has anything to do with the particular
24 limitation, it's a question of what the expectations are in
25 terms of what you are going to get from a plaintiff if you ask

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2 them about their medical providers. I just haven't had good
3 experiences with plaintiffs being able to identify medical
4 providers.

5 MR. MOORE: Judge --

6 THE COURT: But the reason I'm saying this because
7 if you -- if you come in here and you are not having good
8 responses from the plaintiffs, if the thing that you take away
9 from that is that the plaintiffs are being unresponsive and
10 your reaction to that is a result of how you think the
11 plaintiffs are responding, all I want to suggest to you is
12 that the plaintiffs are probably having as much difficulty as
13 you are trying to get information about medical providers. And
14 so I think that you both should recognize that you're trying
15 to identify medical providers, you are probably on the same
16 page. I don't see that the plaintiffs have anything -- as I
17 said, it's certainly possible that there could be some medical
18 providers that say the plaintiff came to me complaining about
19 X, and I couldn't find X, I mean that's possible. But in
20 general, in these cases the plaintiff and the defendant both
21 want to get the medical providers.

22 MS. DAITZ: Your Honor, I think just to bring this
23 back around to Detectives Sheehan and Arroyo, the overarching
24 point that we were making is that these two defendants, unlike
25 plaintiffs, don't have claims in this case, they are not

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2 putting their, you know, condition circa 2009 at issue. There
3 is, we submit, no relevance between and arrest for driving
4 while intoxicated, to credibility, particularly when there is
5 a 20-something year gap between any role they played in the
6 incident at issue in this case and the subsequent arrest.

7 So what we're saying is that in the first instance
8 there those arrests are not at issue in this litigation,
9 unlike plaintiffs' damages. And second, that there is no
10 relationship between a DWI and credibility. And I believe we
11 cited some case law in our initial application --

12 THE COURT: Let me just say this, okay, you may
13 ultimately be right except that I will tell you often when
14 it's the other side, that it's defendants who are seeking
15 information about plaintiffs, they say we don't know until we
16 start asking the questions. It may be that you asked a
17 question about a DWI and it turns out that it's pretty
18 routine, there is nothing to it. But until you know the facts
19 of it, you don't really know whether or not there is
20 credibility issues.

21 MS. DAITZ: Well, Your Honor, the facts of these
22 cases were widely publicized. I mean they were in the paper.

23 THE COURT: I want to tell you what I told my law
24 clerks, you can't believe everything you read in the paper.

25 MS. DAITZ: Well --

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THE COURT: I mean I don't think, you're not taking the position that if there is something that appeared in the paper about the City, that the plaintiffs should be able to take (indiscernible).

MS. DAITZ: Certainly not, Your Honor.

THE COURT: Okay.

MS. DAITZ: The position we're taking is merely that --

THE COURT: I think with regard to these things you should anticipate that, I take the view that the parties generally have the opportunity to explore at least, you know, as an initial matter, what the facts are beyond what somebody -- what's been reported in the paper. I don't have particularly much confidence in what appears in the paper. Indeed, I have a number of cases in which people are complaining about what appears in the papers. And I think each party has the opportunity to look at the facts and, you know, if it's routine, then, you know -- look, at some point, assuming that the plaintiffs start to ask questions about any topic, and they get answers and the answers don't seem to be going anywhere. Now you could get some lawyer who is going to exhaust that and spend an hour asking questions about it, and if they spend their hour asking questions about that and they exhaust their seven hours, then the other side is going to say

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2 they spent an hour asking about this, if you didn't.

3 If you are in a mine and you're not getting any gold
4 out of it, it's time to, you know, shut that mine and look
5 elsewhere. But that doesn't mean that, you know, we can
6 anticipate what is going to happen and what the circumstances
7 were in the case. It turns out that sometimes when we explore
8 the facts of the case we find out that there are some issues.
9 I don't know what the papers reported, but, you know, you can
10 anticipate that I'm not going to make the ruling based upon
11 somebody, either said saying this is what the newspaper said.

12 MR. BELDOCK: Judge, we address all of these issues
13 thoroughly in our papers, I don't think I need to argue any of
14 them now, I just point out that Arroyo was the officer who
15 caught the case, he was one of the principal officers. Sheehan
16 and Arroyo both are key players in the questioning of, and the
17 confessions, supposed questions of the then defendants. There
18 is no question about this, they are not collateral --

19 THE COURT: I'll handle it like this. Okay,
20 certainly someone could make the argument that if an officer
21 was involved in ticket fixing, maybe that's not so big a deal,
22 but I do recall a case that just happened in which the officer
23 who was involved in ticket fixing turned out to have done a
24 number of things that were just plain lies, and that came out
25 because of the ticket fixing. So whether or not these things

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2 are going to be admissible, I don't know, but when we're
3 dealing with parties, I think we should anticipate that I'm
4 going to be looking a little bit more closely at the potential
5 for (indiscernible).

6 MR. BELDOCK: Again, we relied on our papers, but we
7 want to reiterate that we asked for Arroyo's disciplinary
8 records in March, 2010, we still don't have any of the
9 internal documents on Arroyo.

10 THE COURT: And it was promised to you by mid
11 February or something like that.

12 MS. DAITZ: Well, Your Honor, we've been producing
13 personnel files, you know, on a rolling basis well in advance
14 of witness' depositions to the extent possible. We produced,
15 I would say, almost all of them that were in our possession,
16 and if by some oversight Detective Arroyo's wasn't produced
17 with the rest of them, then, you know, again, all plaintiffs
18 had to do was ask and if we have it, it will be produced early
19 next week.

20 Again, his deposition isn't yet scheduled, so to the
21 extent that there is some issue with respect to having that
22 information in advance of the deposition --

23 THE COURT: Counsel said it may have been an
24 oversight, you're going to resolve this also obviously, you're
25 going to -- actually here's the deal. You don't have it.

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MR. BELDOCK: We don't have them --

THE COURT: They're asking for it now.

MS. DAITZ: We're getting it to them by Friday, the latest. The documents that plaintiffs are calling for, we will resolve this issue by next Friday at the latest.

THE COURT: Okay.

MR. MOORE: That's not Arroyo's personnel file or his disciplinary history --

MS. DAITZ: No, it is, it's Arroyo's personnel file.

THE COURT: It now includes Arroyo's personnel and disciplinary file because Ms. Daitz represented that they were producing stuff on a rolling basis and Mr. Beldock said he would -- he wanted it, I figured why should he ask for it in some other form, he's in front of me, if he wants it, they said they can produce it, it's on the table. Can't do any better than making a request in front of the Court. So that means that since it's on the table, if there is no resolution, it's already been brought up, so, you know, you need to --

MR. MOORE: Judge, can I just say, without belaboring the point about the medical records, when the City says, well, why don't we just identify the people who we think are the primary, we've already done that. We did that in our discovery responses. You look at the records, you can tell. But what we are in the process of now is the tail wagging the

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2 dog, where they get the records of the primary care physician
3 going back to 1986. So you are talking about 26 years worth
4 of records or 24. There's going to be tests that are sent
5 out, you know, all kinds of names are going to pop up, that's
6 what we're going through now. And, you know, I just got
7 something in the mail two days ago with another, you know, 20-
8 some-odd subpoenas that are now going out based upon
9 additional releases --

10 THE COURT: Well, Mr. Moore, let me suggest --

11 MR. MOORE: It just has to end at some point, Judge.

12 THE COURT: All right. I think you should interpret
13 my comments to Ms. Daitz (indiscernible). If you believe at
14 this point that we are so far down the totem pole of relevance
15 that, you know, we mined and now we're getting fool's gold,
16 you can make an issue of it and you can discuss it if you
17 don't agree, and I'll just rule on it. But, you know, let's
18 just move on.

19 Clearly there are circumstances in which, you know,
20 when you are dealing with medical providers, you know, and the
21 reality is sometimes I get bills from people I didn't know
22 that I had been treated, okay. Fortunately, my insurance
23 takes care of most of that. But I don't know what is going to
24 be the relevance of these people. And the City wants to argue
25 that there is a potential for relevance, they can make that

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2 argument, and you can argue that it's not going to lead to
3 relevant evidence. I don't know the nature of the people that
4 we're talking about. If you show me that it's somebody who
5 signed something, you know, on page 368 of the record and it
6 took us like a week to find out who the person was, it's
7 probably not going to be somebody who is going to have
8 particularly very much to say because they probably won't even
9 remember it.

10 MR. MOORE: In many cases they just give us the
11 name, we have to do the research to try to find where that
12 doctor is. We then have to contact that doctor, did you see
13 our client; no, I never, I have no records of that.

14 THE COURT: Look, Mr. Moore, if they give you a name
15 and you don't know the name, you just tell them you don't know
16 the name. I mean I don't --

17 MR. MOORE: We tried that, Judge, it didn't work.

18 THE COURT: Well, then if you take that position
19 then I'll decide whether or not that has sway with me.

20 ATTORNEY FOR DEFENDANTS: Your Honor, contrary to
21 Mr. Moore's statement, we've gone through lengths to actually
22 locate addresses and have provided addresses in letters.
23 Clearly there are providers that we won't know the addresses
24 for, we have asked, in fact, I believe at Victor Wise's
25 deposition, we asked him personally to describe a provider

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that they couldn't provide us the address for or the correct name.

So we have certainly been taking extraordinary steps, and it bears repeating that we have on prior occasions given plaintiffs the records and said identify who you believe are the relevant providers and give us those releases. Their response is usually you give us the list and we will provide the releases. So I don't think it's fair to make the arguments that Mr. Moore is making.

THE COURT: Let me just give you my take on this, all right. I understand the problems that the parties seem to be having, but you have to appreciate from my point of view, if you had -- if the plaintiffs' response had been we don't think that any of these people are relevant, we'd just be deciding some other issue because, I mean in some respects the plaintiffs' position by tossing the ball back to you gave you more power than you would have had in a lot of cases that I have because plaintiffs' counsel has said we don't think any of these people are relevant. I mean in this case it seems that the plaintiffs suggestion that they would allow you to point out names is more than I've gotten in some cases. I mean that's not to say, I don't think either of those is the way it should have happened.

ATTORNEY FOR DEFENDANTS: We're not disagreeing,

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2 Your Honor, we're just saying that the complaint about the
3 releases is not clear, if Your Honor did not explain the
4 entire scope of what both parties have been experiencing.

5 THE COURT: I take it as a given that both of you
6 are trying to do your best with regard to medical providers.
7 I reiterate that my issue here is that you should not be
8 expecting that just because you are not getting, you know, the
9 answers, like everybody remembers who's who, that the other
10 side is somehow trying to, you know, pull a fast one. I
11 believe the defendants want to find out the names of the
12 providers. I believe the plaintiffs want to identify the
13 providers, it's just in this kind of a context it's not -- it
14 wouldn't be easy if this had happened a week ago, and it's
15 certainly not easy under the circumstances that we're dealing
16 with here. At some point you have got to give the other side
17 that the benefit that they are actually trying to do this.
18 But it may be mean that at some point the reason that you are
19 having difficulty getting and identifying people is because
20 now you are starting to get people who it is not likely that
21 they are going to be able to provide much (indiscernible).

22 MS. DAITZ: Your Honor, I think one way to at least
23 obviate part of the repercussion of awaiting these releases
24 and doing this on a rolling basis is if plaintiffs would
25 produce to defendants the records that they have in their

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2 possession, custody or control that they've obtained either
3 with respect to separate releases or as part of the
4 investigation they did into their client's damages, which are
5 responsive to our discovery requests. And then we can evaluate
6 them and determine whether we can go forward with the
7 deposition while some of the subpoenas are still outstanding,
8 or if we need a broader scope than what they have produced to
9 us. But we haven't gotten records of that nature, so.

10 THE COURT: This is kind of a suggestion that gets
11 thrown out in a meet and confer, I suggest that you that.

12 MS. DAITZ: Thank you, Your Honor.

13 THE COURT: Michael, we need to at least schedule
14 them for another conference. How long have we been spacing
15 the conferences?

16 MS. DAITZ: About sixty days, Your Honor.

17 THE COURT: Why don't we make it two months this
18 time.

19 THE CLERK: Is May 3rd too early, that's too months.

20 THE COURT: Can we get something early in May, Mike?

21 THE CLERK: May 3rd is a Thursday. Thursday May 3rd
22 at 10:00.

23 THE COURT: I just have one question, what is the
24 representation situation with respect to Delores Wise?

25 MS. DAITZ: Your Honor, Fisher, Byrialsen & Kreizer

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2 withdrew as counsel which the Court granted after an ex parte
3 conference.

4 THE COURT: And as far as you know she is
5 unrepresented, yes?

6 MS. DAITZ: She was instructed that she was to
7 proceed pro se until she obtained representation and I believe
8 the Court advised her of her need to keep --

9 THE COURT: Does anybody have any information on
10 whether or not she has gotten any --

11 MS. FISHER: It is my belief, Your Honor, that she
12 has not retained any other attorney to take over.

13 THE COURT: So we should treat her as pro se.

14 MS. FISHER: Well I just want to say that that's my
15 belief because I haven't heard otherwise, but I also haven't
16 heard that the hasn't retained anyone.

17 THE COURT: And I'm assuming that if, I mean I could
18 just assume that if there was a counsel, you would expect
19 counsel to make themselves known to the Court and to the other
20 lawyers.

21 MS. DAITZ: Your Honor, I just also want to bring to
22 the Court's attention that Ms. Wise's son, Victor Wise, who is
23 represented by Fisher, Byrialsen & Kreizer, testified at his
24 deposition that for all intents and purposes his mother wanted
25 no part of us and didn't want us to know --

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THE COURT: And us meaning?

MS. DAITZ: The defendants, defense counsel, the
case --

THE COURT: Is this Mr. Wise?

MR. WISE: Yes.

MS. FISHER: No, no, no, that's Cory Wise.

MR. WISE: Please. Please.

THE COURT: He wants to say something?

MR. WISE: I want to say yes.

MS. FISHER: Just hold on one minute, Judge.

THE COURT: You want to talk to him?

MR. WISE: Good morning, Judge.

THE COURT: You are?

MR. WISE: I'm Mr. Wise --

MS. FISHER: Cory Wise.

MR. WISE: The spokesperson for the rest of the
family, the Wise family.

THE COURT: You're Cory Wise?

MR. WISE: Right.

THE COURT: Yes.

MR. WISE: This case --

THE COURT: Just so, just to make it clear on the
record, before addressing the Court you talked with Ms.
Byrialsen?

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MR. WISE: Yes.

THE COURT: Byrialsen?

MR. WISE: Yes.

THE COURT: And so but you wish to address the Court about the progress of the case or?

MR. WISE: My family is very disgusted, we lost my father because of my being away. My family disgusted, we all broken up as a puzzle. I'm, me, I'm suffering post traumatic stress disorder because of this here, because of the City here, of this open and shut case. I'm tired, my family is tired. We all broken up. We tired. We tired. I'm about ready to pass out, at any given day I'm ready to pass out. I can't pass out till I see you first. I can't pass out. I got to express this here. I'm hurt. Every day I'm hurt. I feel like I'm sick every day because of this case here. I want to get through with this case, I want to live my life. Everybody live their life except for me. I want to live my life. It's going on 23 years, I want to live my life, I want to live it. Judge, listen, I want to live my life. My family want to live their life. Everybody broken up. Everybody is broken up. They can't do no deposition, if it's a part of the program, then so be it, but you will never hear from my mother again. You will never hear from Victor again. You will never hear from my crack head brother again, Michael Wise. Everybody is

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2 broken up. Everybody is broken up. I'm tired of being
3 harassed on the street. Everybody is broken, all I want to do
4 is live my life. Live my life. Just live my life, Judge.
5 That's all. I'm knocking at forty now, I just want to live my
6 life, man. Just live my life. They want to drag their feet,
7 I want to end it with you. I just want to live my life along
8 with the Wise family, just live our life. Just live. I lost
9 my father, I never saw him. I never came down to visit him,
10 we just want to live our life, man. I would like to go visit
11 his gravesite. We just want to live our life. Fourteen years
12 (indiscernible), I'm speaking out of 14 years plus 18 years,
13 maybe 20 years. We just want live -- I just want to live my
14 life as well as my family, that's it, just live.

15 THE COURT: All right, thank you, Mr. Wise.

16 MR. WISE: Thank you, Judge.

17 THE COURT: Okay. Anything else before we adjourn?
18 I do expect counsel to at least take the opportunity while
19 they're here to make sure that (indiscernible) on some of
20 those discovery disputes, well at least you agree on what the
21 dispute is. And particularly I want to make sure that with
22 respect to the issue that Ms. Daitz and Mr. Moore have
23 differences of opinion about, that at least you talk about it
24 so that at least if you are going to present it to me it will
25 be presented in a way that both sides understand what the

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other side's position is. I don't know whether you need the jury room for that, but if you do it out here my deputy can keep an eye on you.

MR. MOORE: I don't think it's come to that, Judge.

THE COURT: All right, we're adjourned until May 3rd.

(Whereupon the matter is adjourned to May 3,
2012 at 10:00 a.m.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, McCray, Richardson, et al. v., Docket #03cv9685 was prepared using mechanical transcription equipment and is a true and accurate record of the proceedings.

Signature_____

CAROLE LUDWIG

Date: March 14, 2012